

SIDNEY BROOKS ET AL.

IBLA 74-189

Decided September 30, 1975

Appeal from decision of Arizona State Office, Bureau of Land Management, denying request for cancellation of individual grazing licenses and permits.

Affirmed as modified.

1. National Environmental Policy Act of 1969: Environmental Statements -- Grazing Permits and Licenses: Generally

Where by final judgment a court has determined that an environmental impact statement must be filed under 42 U.S.C. § 4332 (1970) according to a particular schedule for the grazing lease program in a particular area, such an approved schedule will be followed by the Department.

APPEARANCES: Sidney Brooks, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

In a letter of October 3, 1973, to the Bureau of Land Management, Kingman, Arizona, appellant requested that the Bureau cancel the grazing lease of Dale Smith and cease the alleged violation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4331 (1970). Appellant quotes section 4331(b)(2) (1970), which provides in part:

* * * [I]t is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

* * * * *

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

* * * * *

Dale Smith currently has cattle grazing privileges in the Dolan Springs allotment. ^{1/} Appellant contends that cattle have caused automobile accidents, destroyed considerable property and are dangerous to the many children who wait for the school bus or play in the area through which the cattle wander. He charges that the Bureau is in violation of 42 U.S.C. § 4332 (1970), which states in part:

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter * * *.

Appellant points out that section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315(f) (1970) reads:

The Secretary of the Interior is hereby authorized, in his discretion, to examine and classify any lands * * * which are * * * more valuable or suitable for any other use than for the use provided for under this subchapter, * * * to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws * * *.

Appellant argues that, considering the Dolan Springs population, leasing the land for cattle grazing at \$37.50 per section per year is not the best use of the land.

Under 42 U.S.C. § 4333 (1970), appellant states that the Bureau was under a directive to review the situation and to propose to the President, not later than July 1, 1971, measures to bring the Bureau into conformity with NEPA. He alleges no such action was taken despite numerous complaints of the residents of the area.

Petitioner urges, as a minimum, that the Bureau cancel all grazing rights within a seven mile radius of the Dolan Springs post office, with certain exceptions.

^{1/} The privileges were renewed and are in effect through February 1976.

In a letter decision dated November 15, 1973, denying appellant's request, the Director of the Arizona State Office stated that NEPA does not apply to the granting of individual licenses or permits. He explained that the Bureau does not ignore the intent of NEPA but has in use a detailed land use planning system and environmental analysis procedures to insure that management programs for the area are consistent with NEPA. Petitioner was assured that the Bureau would carefully review and consider the problem when making management decisions for the area.

It is from this letter that protestant appeals, reiterating his contention that NEPA does apply to the granting of individual licenses or permits.

[1] Under Arizona law, owners who wish to exclude livestock are responsible for fencing their own lands, unless the area in which the private land lies has been designated a "no fence" district. In a "no fence" district, livestock control becomes the responsibility of the open range users. The Dolan Springs area does not have the status of a "no fence" district. The Bureau suggested that the community might petition the County Board of Supervisors to become a power or irrigation district to qualify as a "no fence" district under State law. See ARIZ. REV. STAT. ANN. §§ 24-341 and 342 (1971).

As to whether or not an environmental impact statement is required under the National Environmental Policy Act before issuing grazing privileges to Smith, the Bureau's grazing program has been the subject of recent litigation. In Natural Resources Defense Council v. Morton, 388 F. Supp. 829 (D.D.C. 1974), plaintiffs contended that BLM had failed to comply with the provisions of NEPA 2/ by issuing and renewing grazing permits each year from 1970 to the present and continuing to do so without preparing an Environmental

2/ 42 U.S.C. § 4332 reads in part as follows:

"The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall-

* * * * *

"(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-

"(i) the environmental impact of the proposed action,

Impact Statement (EIS) dealing with the actual environmental impact of such actions. The BLM's Programmatic EIS for the entire grazing program was under attack because it failed to consider the individualized, on the ground effects on local environment. Plaintiffs asked that the court declare the actions of the BLM to be in violation of NEPA and sought a deadline for preparation of appropriate EIS statements. They did not seek an impact statement for individual permits.

In declaring that the Programmatic EIS alone is insufficient to comply with NEPA requirements, the Court stated:

The crucial point is that the specific environmental effects of the permits issued, and to be issued, in each district be assessed. It will be initially within the BLM's discretion to determine whether to make this specific assessment in a separate impact statement for each district, or several impact statements for each district, or one impact statement for several districts or portions thereof, or indeed by other means. So long as the actual environmental effects of particular permits or groups of permits in specific areas are assessed,

fn. 2 (continued)

"(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

"(iii) alternatives to the proposed action,

"(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

"(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review process * * *."

questions of format are to be left to defendants. The court will maintain jurisdiction in order to facilitate future review of the methods chosen by the BLM, and a time period for agency formulation of procedures will be set by subsequent order on recommendation of the parties. (Emphasis added.)

In accordance with this decision, the parties submitted a stipulated schedule for Interior's preparation of individual impact statements. The schedule was approved by the Court on June 18, 1975. 6 Environmental Reporter 388 (1975). The Department agreed to withdraw its appeal, and the judgment became final. The impact statement for the entire district of which Dolan Springs is a part is scheduled for Fiscal Year 1978.

We find that the court-approved schedule for the preparation of individual impact statements disposes of the NEPA issue. The Court in Natural Resources Defense Council did not contemplate that individual leases would be canceled or withheld pending completion of the NEPA statement for the area.

We note that the Bureau has prepared a Management Framework Plan for this area. A memorandum from the District Manager to the State Director dated July 18, 1974, shows that the Bureau is working toward a solution to the problem in Dolan Springs. Public meetings have been held to discuss long-range federal land policies in the area. As a result, the recommendation by the District Manager is that federal tenure in the immediate Dolan Springs area be terminated. If this recommendation is accepted, BLM will dispose of such land and terminate federal grazing licenses thereupon. If that recommendation is not accepted, it is suggested the classification of the land in the immediate vicinity of Dolan Springs be subject to an early review.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

